



# House of Representatives

General Assembly

**File No. 670**

*January Session, 2015*

House Bill No. 6086

*House of Representatives, April 16, 2015*

The Committee on Government Administration and Elections reported through REP. JUTILA of the 37th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT EXPANDING THE SET-ASIDE PROGRAM TO INCLUDE MUNICIPALITIES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) to (d), inclusive, of section 4a-60g of the  
2 general statutes are repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2015*):

4 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
5 the following terms have the following meanings:

6 (1) "Small contractor" means any contractor, subcontractor,  
7 manufacturer, service company or nonprofit corporation (A) that  
8 maintains its principal place of business in the state, (B) that had gross  
9 revenues not exceeding fifteen million dollars in the most recently  
10 completed fiscal year prior to such application, and (C) that is  
11 independent. "Small contractor" does not include any person who is  
12 affiliated with another person if both persons considered together have

13 a gross revenue exceeding fifteen million dollars.

14 (2) "Independent" means the viability of the enterprise of the small  
15 contractor does not depend upon another person, as determined by an  
16 analysis of the small contractor's relationship with any other person in  
17 regards to the provision of personnel, facilities, equipment, other  
18 resources and financial support, including bonding.

19 (3) "State agency" means each state board, commission, department,  
20 office, institution, council or other agency with the power to contract  
21 for goods or services itself or through its head.

22 (4) "Minority business enterprise" means any small contractor (A)  
23 fifty-one per cent or more of the capital stock, if any, or assets of which  
24 are owned by a person or persons who (i) exercise operational  
25 authority over the daily affairs of the enterprise, (ii) have the power to  
26 direct the management and policies and receive the beneficial interest  
27 of the enterprise, (iii) possess managerial and technical competence  
28 and experience directly related to the principal business activities of  
29 the enterprise, and (iv) are members of a minority, as such term is  
30 defined in subsection (a) of section 32-9n, or are individuals with a  
31 disability, or (B) which is a nonprofit corporation in which fifty-one  
32 per cent or more of the persons who (i) exercise operational authority  
33 over the enterprise, (ii) possess managerial and technical competence  
34 and experience directly related to the principal business activities of  
35 the enterprise, (iii) have the power to direct the management and  
36 policies of the enterprise, and (iv) are members of a minority, as  
37 defined in this subsection, or are individuals with a disability.

38 (5) "Affiliated" means the relationship in which a person directly, or  
39 indirectly through one or more intermediaries, controls, is controlled  
40 by or is under common control with another person.

41 (6) "Control" means the power to direct or cause the direction of the  
42 management and policies of any person, whether through the  
43 ownership of voting securities, by contract or through any other direct  
44 or indirect means. Control shall be presumed to exist if any person,

45 directly or indirectly, owns, controls, holds with the power to vote, or  
46 holds proxies representing, twenty per cent or more of any voting  
47 securities of another person.

48 (7) "Person" means any individual, corporation, limited liability  
49 company, partnership, association, joint stock company, business trust,  
50 unincorporated organization or other entity.

51 (8) "Individual with a disability" means an individual (A) having a  
52 physical or mental impairment that substantially limits one or more of  
53 the major life activities of the individual, which mental impairment  
54 may include, but is not limited to, having one or more mental  
55 disorders, as defined in the most recent edition of the American  
56 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
57 Disorders", or (B) having a record of such an impairment.

58 (9) "Nonprofit corporation" means a nonprofit corporation  
59 incorporated pursuant to chapter 602 or any predecessor statutes  
60 thereto.

61 (10) "Municipality" means any town, consolidated town and city or  
62 consolidated town and borough.

63 (11) "Quasi-public agency" has the same meaning as provided in  
64 section 1-79.

65 (12) "Awarding authority" means the head of a state agency or  
66 quasi-public agency or the chief executive officer of a municipality  
67 with the power to contract for goods or services.

68 (13) "Public works contract" means any agreement between any  
69 individual, firm or corporation and the state or any political  
70 subdivision of the state (A) for construction, rehabilitation, conversion,  
71 extension, demolition or repair of a public building or highway or  
72 other changes or improvements in real property, and (B) which is  
73 financed in whole or in part by the state, including, but not limited to,  
74 matching expenditures, grants, loans, insurance or guarantees.

75 (b) It is found and determined that there is a serious need to help  
76 small contractors, minority business enterprises, nonprofit  
77 organizations and individuals with disabilities to be considered for  
78 and awarded state and municipal public works contracts [for the  
79 construction, reconstruction or rehabilitation of public buildings, the  
80 construction and maintenance of highways] and contracts for the  
81 purchase of goods and services financed in whole or in part by the  
82 state, including, but not limited to, matching expenditures, grants,  
83 loans, insurance or guarantees. Accordingly, the necessity, in the  
84 public interest and for the public benefit and good, of the provisions of  
85 this section, sections 4a-60h to 4a-60j, inclusive, and sections 32-9i to  
86 32-9p, inclusive, is declared as a matter of legislative determination.  
87 Notwithstanding any provisions of the general statutes to the contrary,  
88 and except as set forth [herein] in this section, the head of each state  
89 and quasi-public agency and the chief executive officer of each  
90 [political subdivision of the state other than a] municipality shall set  
91 aside in each fiscal year, for award to small contractors, on the basis of  
92 competitive bidding procedures, contracts or portions of public works  
93 contracts [for the construction, reconstruction or rehabilitation of  
94 public buildings, the construction and maintenance of highways] and  
95 contracts for the purchase of goods and services financed in whole or  
96 in part by the state. Eligibility of nonprofit corporations under the  
97 provisions of this section shall be limited to predevelopment contracts  
98 awarded by the Commissioner of Housing for housing projects. The  
99 total value of such contracts or portions thereof to be set aside by each  
100 such agency or municipality shall be at least twenty-five per cent of the  
101 total value of all contracts let by the head of such agency or the chief  
102 executive officer of such municipality in each fiscal year, provided that  
103 neither: (1) A contract that may not be set aside due to a conflict with a  
104 federal law or regulation; or (2) a contract for any goods or services  
105 which have been determined by the Commissioner of Administrative  
106 Services to be not customarily available from or supplied by small  
107 contractors shall be included. Contracts or portions thereof having a  
108 value of not less than twenty-five per cent of the total value of all  
109 contracts or portions thereof to be set aside shall be reserved for

110 awards to minority business enterprises.

111 (c) The [head of any state agency or political subdivision of the state  
112 other than a municipality] awarding authority may, in lieu of setting  
113 aside any contract or portions thereof, require any general or trade  
114 contractor or any other entity authorized by such state or quasi-public  
115 agency or municipality to award contracts, to set aside a portion of any  
116 contract for subcontractors who are eligible for set-aside contracts  
117 under this section. Nothing in this subsection shall be construed to  
118 diminish the total value of contracts which are required to be set aside  
119 by any state or quasi-public agency or [political subdivision of the state  
120 other than a] municipality pursuant to this section.

121 (d) [The heads of all state agencies and of each political subdivision  
122 of the state other than a municipality] Each awarding authority shall  
123 notify the Commissioner of Administrative Services of all contracts to  
124 be set aside pursuant to subsection (b) or (c) of this section at the time  
125 that bid documents for such contracts are made available to potential  
126 contractors.

127 Sec. 2. Subsection (h) of section 4a-60g of the general statutes is  
128 repealed and the following is substituted in lieu thereof (*Effective*  
129 *October 1, 2015*):

130 (h) The provisions of this section shall not apply to any state or  
131 quasi-public agency or [political subdivision of the state other than a]  
132 municipality for which the total value of all contracts or portions of  
133 contracts of the types enumerated in subsection (b) of this section is  
134 anticipated to be equal to ten thousand dollars or less.

135 Sec. 3. Subsections (l) and (m) of section 4a-60g of the general  
136 statutes are repealed and the following is substituted in lieu thereof  
137 (*Effective October 1, 2015*):

138 (l) On or before August 30, 2007, and annually thereafter, each state  
139 and quasi-public agency setting aside contracts or portions of contracts  
140 and on or before August 30, 2016, and annually thereafter, each

141 [political subdivision of the state other than a] municipality setting  
142 aside contracts or portions of contracts shall prepare a report  
143 establishing small and minority business set-aside program goals for  
144 the twelve-month period beginning July first in the same year. Each  
145 such report shall be submitted to the Commissioner of Administrative  
146 Services, the Commission on Human Rights and Opportunities and the  
147 cochairpersons and ranking members of the joint standing committees  
148 of the General Assembly having cognizance of matters relating to  
149 planning and development and government administration. [and  
150 elections.]

151 (m) On or before November 1, 1995, and quarterly thereafter, each  
152 state and quasi-public agency [and each political subdivision of the  
153 state other than a municipality] setting aside contracts or portions of  
154 contracts and on or before November 1, 2016, and quarterly thereafter,  
155 each municipality setting aside contracts or portions of contracts shall  
156 prepare a status report on the implementation and results of its small  
157 business and minority business enterprise set-aside program goals  
158 during the three-month period ending one month before the due date  
159 for the report. Each report shall be submitted to the Commissioner of  
160 Administrative Services and the Commission on Human Rights and  
161 Opportunities. Any state or quasi-public agency or [political  
162 subdivision of the state, other than a] municipality, that achieves less  
163 than fifty per cent of its small contractor and minority business  
164 enterprise set-aside program goals by the end of the second reporting  
165 period in any twelve-month period beginning on July first shall  
166 provide a written explanation to the Commissioner of Administrative  
167 Services and the Commission on Human Rights and Opportunities  
168 detailing how the state or quasi-public agency or [political  
169 subdivision] municipality will achieve its goals in the final reporting  
170 period. The Commission on Human Rights and Opportunities shall: (1)  
171 Monitor the achievement of the annual goals established by each state  
172 and quasi-public agency and [political subdivision of the state other  
173 than a] municipality; and (2) prepare a quarterly report concerning  
174 such goal achievement. The report shall be submitted to each state or  
175 quasi-public agency or municipality that submitted a report, the

176 Commissioner of Economic and Community Development, the  
 177 Commissioner of Administrative Services and the cochairpersons and  
 178 ranking members of the joint standing committees of the General  
 179 Assembly having cognizance of matters relating to planning and  
 180 development and government administration, [and elections.] Failure  
 181 by any state or quasi-public agency or [political subdivision of the state  
 182 other than a] municipality to submit any reports required by this  
 183 section shall be a violation of section 46a-77.

184 Sec. 4. Section 46a-68b of the general statutes is repealed and the  
 185 following is substituted in lieu thereof (*Effective October 1, 2015*):

186 As used in this section and sections 4a-60, 4a-60a, [4a-60g,] 4a-62,  
 187 46a-56 and 46a-68c to 46a-68k, inclusive: "Public works contract" means  
 188 any agreement between any individual, firm or corporation and the  
 189 state or any political subdivision of the state other than a municipality  
 190 for construction, rehabilitation, conversion, extension, demolition or  
 191 repair of a public building, highway or other changes or improvements  
 192 in real property, or which is financed in whole or in part by the state,  
 193 including, but not limited to, matching expenditures, grants, loans,  
 194 insurance or guarantees.

195 Sec. 5. Section 7-148u of the general statutes is repealed. (*Effective*  
 196 *October 1, 2015*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	4a-60g(a) to (d)
Sec. 2	<i>October 1, 2015</i>	4a-60g(h)
Sec. 3	<i>October 1, 2015</i>	4a-60g(l) and (m)
Sec. 4	<i>October 1, 2015</i>	46a-68b
Sec. 5	<i>October 1, 2015</i>	Repealer section

**GAE** Joint Favorable

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Human Rights & Opportunities, Com.	GF - Cost	665,000	665,000
Dept. of Administrative Services	GF - Cost	425,368	425,368
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	394,372	394,372

Note: GF=General Fund

### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
All Municipalities	Potential Cost	See Below	See Below

### **Explanation**

The bill would apply set-aside requirements to municipal expenditures that are at least in part state funded, including but not limited to construction grants, loans, insurance and guarantees. The bill would also limit the types of contracts state and quasi-public agencies must set aside to only those contracts paid for, in whole or in part, with state funds.

The Department of Administrative Services' (DAS) Supplier Diversity Office analyzes the budgets of set-aside participants, sets unique set-aside goals for each participant, verifies the vendors receiving contracts are certified by the state as small or minority owned businesses, and offers training and assistance to participants. DAS also audits the records of companies that apply for small business

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.



or minority business enterprise certification and engage in education and outreach in the business community.

The bill would increase the number of entities participating in the set-aside program by 169. The expansion is also expected to lead to an increase in the number of vendors applying for certification.

DAS would require \$562,718 to administer the expanded program. Of which, \$492,718 is for the salaries and fringe benefits of five Processing Technicians and two Account Examiners, and \$70,000 for Other Expenses. These costs are not expected to be fully realized in FY 16 due to delays in hiring. The set-aside contract limits under the bill have no fiscal impact.

The bill also requires the Commission on Human Rights and Opportunities (CHRO) to monitor and report on the achievement of annual goals by the expanded group of participants. Adding approximately 169 more participants to the set aside program is anticipated to have significant fiscal impacts to CHRO as the program currently affects approximately 60 agencies. CHRO's contract compliance unit is anticipated to require approximately eight Human Rights and Opportunities Representatives and one secretary to perform the work. Salary for these positions is estimated at approximately \$450,000 (plus \$173,925 for fringe benefits) in FY 16 and annually thereafter. Additionally, the CHRO Legal Division is anticipated to require three additional Attorney 1 positions with a total approximate salary of \$215,000 (plus \$83,098 for fringe benefits) in FY 16 and annually thereafter.

Requiring municipalities and the Metropolitan District Commission to participate in the state's set-aside program when bidding certain contracts may increase the cost of certain public works contracts if potential lowest qualified bidders do not meet the requirements.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

*Sources: Commission on Human Rights and Opportunities  
Department of Administrative Services*

**OLR Bill Analysis****HB 6086*****AN ACT EXPANDING THE SET-ASIDE PROGRAM TO INCLUDE MUNICIPALITIES.*****SUMMARY:**

This bill requires municipalities to participate in the state set-aside program for small and minority contractors. The program requires state agencies and political subdivisions (municipalities are excluded under current law) to set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors (SBE). The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE) (see BACKGROUND).

The bill subjects municipalities to the set-aside program's existing requirements for (1) goal-setting and reporting and (2) ensuring compliance by contractors and subcontractors awarded set-aside contracts. It removes the statutory authority for municipalities to administer their own set-aside programs. (Currently, Bridgeport, Hartford, and New Haven have their own set-aside programs.)

Under the bill, municipalities must set aside only contracts financed in whole or in part by the state. However, the set-aside goals must be based on the municipality's total contracting volume (i.e., including contracts that have no state funds).

The bill also limits the types of contracts that state and quasi-public agencies must set aside. Under current law, most state and quasi-public agency construction and goods and services contracts are subject to the set-aside requirement. The bill instead requires state and quasi-public agencies to set aside only those contracts paid for in

whole or in part with state funds. However, it maintains a requirement that the set-aside goals be based on the agencies' total contracting volume.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2015

## **GOAL-SETTING AND REPORTING**

The bill subjects municipalities to the set-aside program's existing requirements for goal-setting and reporting. Such requirements include (1) notifying the Department of Administrative Services (DAS) commissioner annually by August 30 of their SBE and MBE set-aside goals for the fiscal year and (2) providing quarterly progress reports beginning November 1 to DAS and the Commission on Human Rights and Opportunities.

The bill appears to require municipalities to participate in the set-aside program in FY 16. However, because the bill is effective October 1, 2015, it appears that they would have only nine months to attain their FY 16 goals. Additionally, the bill requires municipalities to comply with the above reporting requirements beginning by August 30, 2016 and November 1, 2016, respectively. It is thus unclear how DAS would monitor municipalities' compliance with their set-aside program goals in FY 16.

## **BACKGROUND**

### ***Definitions of SBE and MBE***

By law, an SBE is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. MBEs are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities.

### ***Related Bill***

sSB 831, reported favorably by the Planning and Development Committee, also requires municipalities to participate in the state set-aside program.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 9      Nay 6      (03/30/2015)